IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 180 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M/S DHANRAJ BUILDERS PVT LTD. - Appellant(s)
Versus
VILLASBEN ASHOKBHAI KAKADIYA & 10 - Respondent(s)

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Appearance :
MR AJ PATEL with MS MO NARSINGHANI for Appellant(s) : 1,
MR SI NANAVATI senior advocate for Respondents

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 10/05/2007

ORAL JUDGMENT

1. The appellant- original plaintiff is before this Court being aggrieved by order passed below Exh.5 in Special Civil Suit No. 50 of 2006 dated 30.04.2007 by the learned 6th Additional Senior Civil Judge, Rajkot.

The learned Judge was pleased to reject Exh.5 application.

2. The facts of the case, as set out by the appellant in the list of events, are that on 26.7.2004, Manubhai Ramjibhai Bodhar-respondent No.11 executed a power of attorney in favour of Rameshbhai Rambhai Dodiya, who is respondent No.10. Thereafter, on 15.10.2004, respondent No.11 executed a registered sale deed in favour of respondent No.10. Subsequent to that, the present appellant entered into an agreement to sell with respondent No.10 for a sum of Rs.52,36,320/-. It is the case of the plaintiff-appellant herein that, out of that amount, Rs. 40,00,000/- were paid to present respondent No.10 by the appellant by a cheque No.060668 dated 24.2.2005 towards sale consideration amount.

The controversy involved is about the very same agreement, a copy of which is made available by the learned advocate for the appellant with the paper-book.

Learned senior counsel Mr. A.J. Patel, appearing with Ms. Narsinghani, submitted that it was agreed in the said agreement that, 'after getting the N.A. permission, within 75 days, the applicant has to pay remaining amount of the sale consideration and has to get the sale deed executed'. He submitted that the N.A. permission was obtained on 31.05.2005 and within 27 days thereof, the respondents started selling the plots which were otherwise subject matter

of the sale agreement.

He submitted that two important aspects are required to be considered; i.e. 'time is not the essence of this agreement' and, therefore, 'the respondents have committed an error in selling out the plots without giving any notice to the appellant and without giving them an opportunity to get the sale deed executed in terms of the agreement'.

On perusal of the agreement, it is noticed that the submissions made by the learned senior counsel are not borne out from the contents of the agreement. It is specifically mentioned in the agreement in Clause (2) that, 'within 75 days from today, applicants were to make payment of the remaining amount of the sale consideration and were to get the sale deed executed either in their own name or in the name of the persons nominated by them'. The learned senior counsel tried to read the earlier part of that sentence wherein it is stated that, 'remaining amount of the sale consideration is to be paid to the vendor on land being converted into N.A.', in isolation, which cannot be done.

Besides, in Clause (4) of the aforesaid averment also it is reiterated that, 'the remaining amount of the sale consideration is to be paid within 75 days from TODAY'. The learned advocate for the appellant invited attention of the Court to the order impugned and submitted that the learned Judge has erred in

considering the true and correct spirit of the agreement. The learned advocate is right in submitting so because the learned Judge did not agree to the interpretation put forward by the counterpart of the learned advocate appearing for the appellant. The learned Judge read the document as is read by this Court. This Court is not able to understand as to how and why words 'within 75 days from TODAY' are to be read in any other manner.

3. In that view of the matter, this Court does not find any error in the order passed by the learned 6th Additional senior Civil Judge, Rajkot. In the result, the Appeal from Order must fail.

4. At this juncture, learned senior counsel Mr. S.I. Nanavati made available a copy of order passed by this Court in Civil Application No. 2742 of 2007 in Appeal from Order No. 66 of 2007 (Coram: Hon'ble Mr. Justice P.B. Majmudar) dated 02.03.2007.

Mr. A.J. Patel, learned advocate for the appellant, objected to the same saying that this order cannot be taken into consideration as he is not supplied a copy thereof and is not put to notice that order dated 2.3.2007 passed in Civil Application No. 2742 of 2007 in Appeal from Order No. 66 of 2007 is going to be placed before this Court.

The objection is overruled. The objection is misplaced, more so when the order is between the

same party and it is an order which can always be considered by this Court. The order depicts that the advocate appearing for the appellant in the present Appeal from Order and in the earlier matter is the same. Be that as it may, the order passed by this Court in Civil Application No. 2742 of 2007 was subject matter of Special Leave to Appeal (Civil) No. 7246 of 2007 and the Hon'ble the Apex Court has passed the following order:

> "Learned counsel for the petitioner after arguing the matter for some time seeks leave of the Court to withdraw this petition stating that an application for hearing shall be filed before the High Court. The special leave petition is dismissed as withdrawn accordingly"

For the ready perusal, the order passed by this Court in Civil Application No. 2742 of 2007 is also reproduced as under:

> 1. By filing this Civil Application, the applicant has prayed that during the pendency of Appeal from Order No.66 of 2007, the original owner-opponent No.13 may be restrained from transferring the remaining portion of the land.
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> 2. This application is opposed by Mr. S.M.Shah, learned advocate for the opponent No.13 and Mr. Navin Pahva, learned advocate for the opponent No.14. It is submitted by both the

learned counsel that the trial Court has prima facie come to the conclusion that the plaintiff-applicant herein is not entitled to interim relief as the plaintiff has not tried to get the agreement in question executed in his favour through the power of attorney holder-opponent No.14. It is pointed out to the Court that at the time when the suit was filed, part of the land was already transferred by way of sale to the opponents No.1 to 12.

3. It is required to be noted that even after the public notice was given by the opponent No.14, the suit is filed after considerable long time and in the meanwhile, part of the land which is the subject matter of the agreement in question is already transferred by way of sale. The plaintiff has never taken up follow up steps for getting the sale deed executed in his favour and the suit is filed only when the portion of the land is transferred by way of sale to opponent Nos.1 to 12, who are bona-fide purchasers. In that view of the matter, now instead restraining opponents No.13 and 14 from transferring rest of the land, it would be proper to hold that any further transaction is carried out by the opponents No.13 and 14 in connection with the remaining portion of the land, the same shall be subject to the result of the present Appeal from Order.

4. Since the detailed examination is necessary in the matter i.e. Appeal from Order, the same is admitted by the Court. However, considering the reasoning given by the trial Court, the injunction as prayed for in this Civil Application is not required to be granted and as pointed out earlier, the transaction with regard to remaining portion of the land, if any, is concerned, the same shall be subject to the result of the present Appeal from Order.

5. With the above observations and directions, the Civil Application is disposed of.”

5. In the result, the Appeal from Order fails. The same is dismissed.'

(RAVI R. TRIPATHI, J.)

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